What Every Member of the Trade Community Should Know About:

NAFTA (the North American Free Trade Agreement) for Textiles and Textile Articles

A Basic Level
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PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), which is also known as the Customs Modernization Act or "Mod Act," became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws. Two new concepts which emerge from the Mod Act are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met. The Customs Service is then responsible for fixing the final classification and value of the merchandise. The failure of an importer of record to exercise reasonable care may lead to delay in the release of merchandise or the imposition of penalties.

This office has been given a major role in meeting Customs informed compliance responsibilities. In order to provide information to the public, Customs intends to issue a series of informed compliance publications, and possibly CD-ROMs and videos, on topics such as value, classification, entry procedures, determination of country of origin, marking requirements, intellectual property rights, record keeping, drawback, penalties and liquidated damages.

The National Commodity Specialists Division of the Office of Regulations and Rulings has prepared this publication on Agricultural Actual Use, as part of a series of informed compliance publications regarding the classification of imported merchandise. It is hoped that this material, together with seminars and increased access to Customs rulings, will help the trade community in improving voluntary compliance with the Customs laws.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Comments and suggestions are welcomed, and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

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NOTE: References to Section 102.21, of the Customs Regulations (“CR”), refer to Section 102.21 as added by T.D. 95-69, which was published in the Federal Register on September 5, 1995, 60 FR 46188. The current Customs Regulations of the United States in loose-leaf format are available for sale from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The 1996 Edition of Title 19, Code of Federal Regulations, which incorporates all changes to the Customs Regulations from April, 1995 through March, 1996 will be available for sale from the same address.

1. Introduction: "The Big Picture" - Determining NAFTA Benefits

Before getting into the details, we will first step back and look at the "Big Picture" of NAFTA benefits and how to determine which ones apply to your goods. After we understand what each of the rules are used for, we will look at the rules themselves in detail, as they apply to textiles. At the end of this section is a flowchart that helps you to decide what you need to know about your particular textile product and how in general it is affected by NAFTA.

The first thing we might need to know is whether the goods are originating as defined in the NAFTA Preference Rules. If the goods are originating, then there are no import quotas or visa requirements and the goods are entitled to the reduced or free NAFTA duty rates. Which duty rate will apply (Mexico or Canada), will depend on the Marking Rules.

At the same time, you may also wish to consider whether the goods qualify under the Mexican Special Regime, a special program for certain goods assembled in Mexico from U.S. formed and cut components (see section 4 for details). If they do qualify for this program, they are free of duty and also free of quota and visa requirements, regardless of whatever all the other rules say. In the early stages of NAFTA, when not all duty rates have become free, one might consider the Mexican Special Regime first, since its benefits can be greater than those for normal NAFTA-originating goods.

If the goods are non-originating, there is still another benefit that might apply - Tariff Preference Levels (TPLs). Under these rules, goods will be entitled to the NAFTA reduced duty rates, until a numerical limit of imports is reached. *However, they may still be subject to quota/visa requirements* (see below).

If the goods are non-originating (whether or not they are entitled to TPLs), they may be subject to import quota and visa requirements. We use the Country of Origin Rules found in section 102.21, CR to determine which country is the country of origin*:*

> If the country is Mexico, then certain categories of goods will have quota and visa requirements (details below).
>
> If section 102.21, CR determines the country of origin to be Canada, there are no such restrictions.

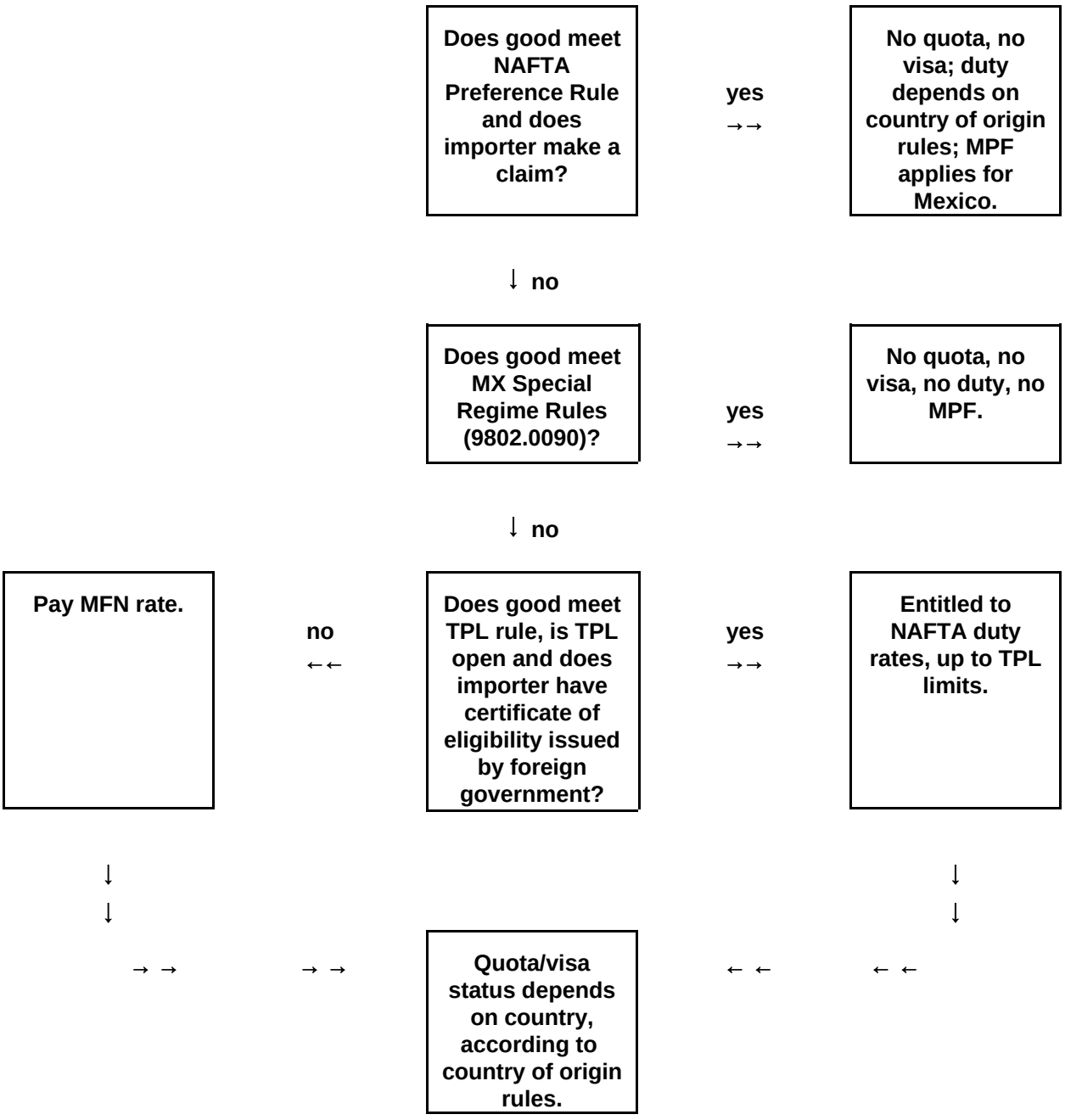
If section 102.21, CR says the country of origin is a country other than Mexico or Canada, the goods will be subject to whatever quota and visa restrictions apply to goods of that country.

The absolute quotas from Mexico for non-originating goods will be phased out gradually. For instance, quotas on Mexico's exports of non-originating fabrics will be eliminated after the sixth year except for textile categories 410, 433, 443 and 611. Quotas on categories 410 and 611 will remain in place for ten years.Quota and visa requirements have been established for 21 different category numbers, covering 14 restraint levels. These requirements are only for goods that do not meet the rules of origin as specified in the Agreement, but that are products of Mexico under section 102.21, CR. The fact that a given good might qualify for a TPL, does not exempt that good from quota and visa requirements, if they fall within one of the categories listed below:

219	347\348\647\648	
313	410	
314	433	
315	443	
317	611	
338\339\638\639		633
340\640		643

Now that we have this overview of the various rules that can apply to textiles, we will take a closer look at each of them.

Determining NAFTA Benefits and Import Requirements for Textiles



2. NAFTA Preference Rules

A. NAFTA Preference Rules (Overall)

First, just to put things in perspective, let's look at the overall NAFTA Preference Rules for all goods, from Article 402 of the NAFTA. The rules are not sequential; the producer can pick and choose among the four of them. We refer to them, based on their designations in the Agreement, as Rules A, B, C and D, because those letters must be used to complete the NAFTA Certificate of Origin; however, we will use the text from General Note 12 of the HTSUSA. First consider Rule A, which corresponds to General Note 12(b)(I):

(I)they are goods wholly obtained or produced entirely in the territory of Canada, Mexico and/or the United States;

"Not one atom of foreign material" is one way to remember this rule, although that would be oversimplifying (see discussion of the de minimis rule, later). Next is Rule B, which corresponds to General Note 12(b)(ii):

(ii)they have been transformed in the territory of Canada, Mexico and/or the United States so that--

> (A)except as provided in subdivision (f) of this note, each of the non-originating materials used in the production of such goods undergoes a change in tariff classification described in subdivisions (r), (s) and (t) of this note or the rules set forth therein, or
>
> (B)the goods otherwise satisfy the applicable requirements of subdivisions (r), (s) and (t) where no change in tariff classification is required, and the goods satisfy all other requirements of this note

This is the rule we might use when there are some foreign (non-originating) materials involved. It requires us to check the "specific rules of origin," which are listed by the HTS number for the good, to see what changes in tariff classification must have occurred for the good to qualify. These rules differ from product to product. Some of them require just a change in tariff classification such as from one heading to another or from one chapter to another. Other rules have a change in tariff classification plus a specified percentage of Regional Value Content, or value added, within the Territory. We'll look at them more closely later in this section. Next is Rule C, which corresponds to General Note 12(b)(iii):

(iii)they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials;

This rule is used when there are some foreign materials involved, but those materials underwent changes required by Rule B to become an intermediate (NAFTA) product which in turn was made into the final good. Finally there is Rule D, which corresponds to General Note 12(b)(iv):
(iv)they are produced entirely in the territory of Canada, Mexico and/or the United States but one or more of the non-originating materials falling under provisions for "parts" and used in the production of such goods does not undergo a change in tariff classification
because--

> (A)the goods were imported into the territory of Canada, Mexico and/or the United States in unassembled or disassembled form but were classified as assembled goods pursuant to general rule of interpretation 2(a), or
>
> (B) the tariff headings for such goods provide for and specifically describe both the goods themselves and their parts and is not further divided into subheadings, or the subheadings for such goods provide for and specifically describe both the goods themselves and their parts,
>
> provided that such goods do not fall under chapters 61 through 63, inclusive, of the tariff schedule, and provided further that the regional value content of such goods, determined in accordance with subdivision (c) of this note, is not less than 60 percent where the transaction value method is used, or is not less than 50 percent where the net cost method is used, and such goods satisfy all other applicable provisions of this note. For purposes of this note, the term "material" means a good that is used in the production of another good, and includes a part or an ingredient.

Rule D is really a pair of "fallback" rules for goods which fail to meet the other Rules, for goods assembled from unassembled kits, and for goods which are classified in the same provision as their parts. They can still qualify if they meet certain RVC requirements.

Now that we're talking about just textiles of HTSUSA Section XI, let's simplify these rules. The only ones that might apply to textiles are:

> A. Wholly obtained or produced

An example would be cotton grown in Mexico, or a sweater made entirely in the NAFTA territory from cotton grown in Mexico.

B. Foreign materials meet tariff change rules (but note that none of the textile rules involve Regional Value Content).

We will see many examples of this rule later in this chapter. It is important to note at this point that no matter how much value has been added to foreign materials in the NAFTA territory, the good will not meet this rule unless it undergoes the specified change in tariff classification. The amount of "value added" is irrelevant for textiles.

C. Made entirely from originating materials.

If the exporter can prove that the materials used to make the goods were somehow originating (i.e., became a product of the NAFTA territory), there is no need to worry about satisfying the tariff change rule for the finished good.

Note that rule D does not apply to chapters 61-63. And since it involves parts, it is unlikely to apply very often to chapters 50-60, since few, if any, products in those chapters would ever involve parts. So, for practical purposes, we will also cross rule D off our list.

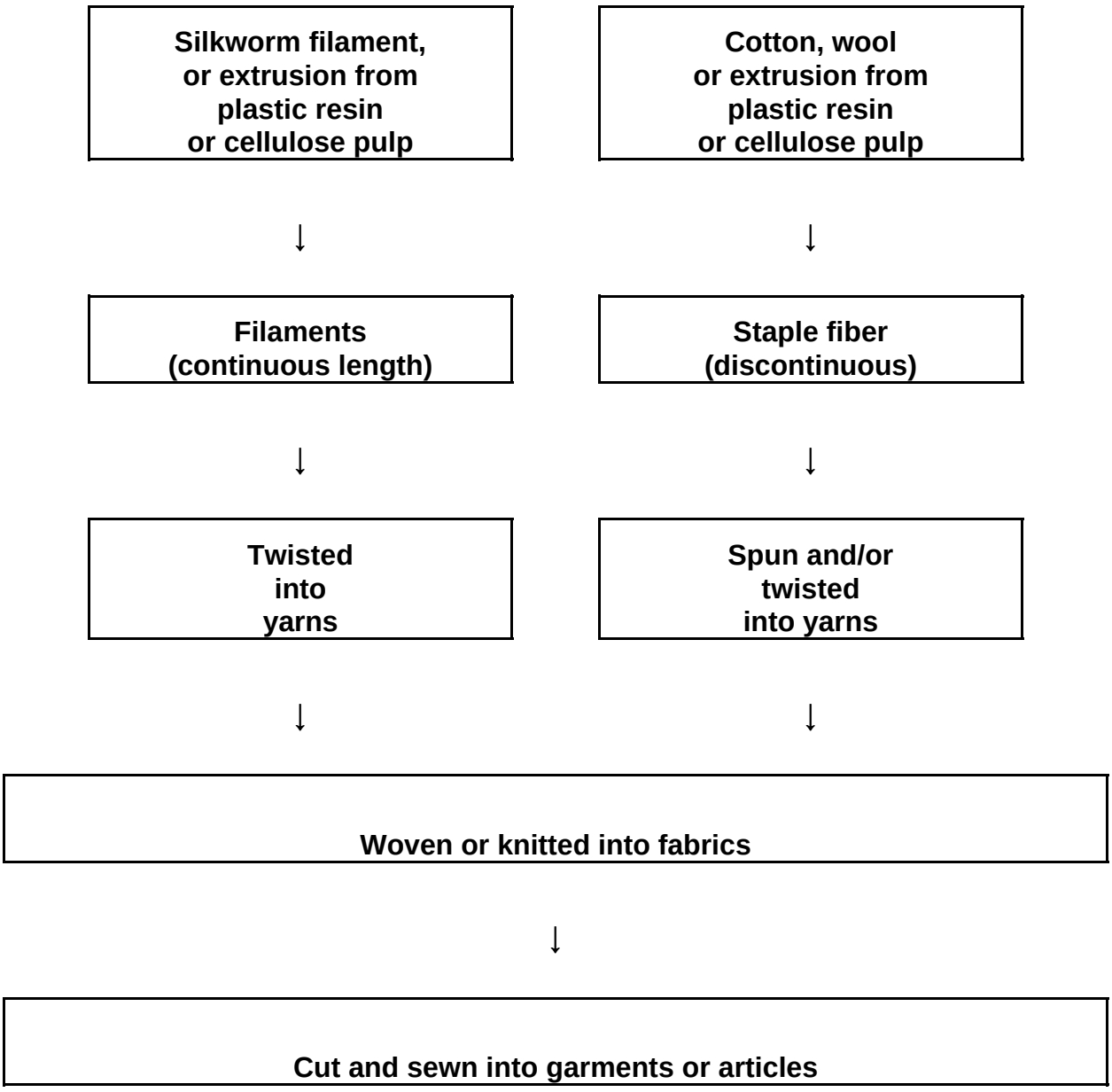
There are other things to remember about the basic NAFTA Preference Rules:

The De Minimis Rule says that for textiles, ~~materials~~ fibers or yarns used in the component that determines the classification, that are 7% or less by weight and that don't meet the tariff change rules, can be disregarded.

Also remember that for all products, disregard shipment packing and retail packing in considering whether a good underwent the required tariff changes.

Now let's take a look at different textile product groups and see how they are treated by the Specific NAFTA Preference Rules (the ones that Rule B refers to).

Basic Steps in Textile Production



B. Four Basic Types of Specific Rules for Textile Products

Generally, as shown in the chart on the previous page, the manufacturing progression in the textile sector is: fibers are made into yarns, yarns are made into fabric, fabric is cut into components, and cut components are sewn to complete finished articles or garments. Let's look at each of these stages and see how they are treated under the rules of origin.

The terms "fiber forward," "yarn forward," and even "fabric forward" are popular, short-hand ways of discussing the basic rules of origin for textile and apparel goods under NAFTA. It is important to note that there are no legal definitions of these terms in the Agreement. These are concepts which apply to various textile sectors; they are not rules. As we discuss rules of origin for the following broad sectors of textile products, we will be using these terms to help understand the intent of the agreement. *But please do not treat these concepts as "rules" when making decisions about whether a good originates. There are just too many exceptions to these concepts for us to rely on them!*

Keeping that stern warning in mind, it is still helpful to define these terms, because almost all of the NAFTA Preference Rules for textiles fit one of these four types. So it's a good shorthand way to describe a given rule.

> A "Fiber Forward" rule would be one that requires that the fiber must be formed in the NAFTA territory. In the case of natural fibers such as wool or cotton it would mean that they would have to be grown in the territory. In the case of man-made fibers, it would mean that they would have to be extruded in the territory.
>
> A "Yarn Forward" rule would be one that requires that the yarn must be formed in the territory, i.e., it would mean that the yarn must be spun (or in the case of filament yarn, extruded) within the territory.
>
> A "Fabric Forward" rule would require that the fabric must be formed (usually knitted or woven) in the territory.
>
> A "Cut and Sewn" rule would require only that cutting and sewing of the finished article occur in the territory.

As we go through the Specific Rules we will see instances of each of these types.

C. Specific Rules Pertaining to Yarns

There is a "fiber forward" approach for most cotton and man-made fiber spun yarn and sewing thread. This means that the fiber itself must be created in the NAFTA territory. Filament yarns must be composed of filaments that are formed or extruded in a NAFTA country, but petrochemical or cellulosic feedstock that is used to make the filaments may be sourced outside NAFTA. Wool, silk and certain specialty yarns of chapter 56 require only a "single transformation" (i.e. they are spun within NAFTA, or "yarn forward").

The first step in determining whether a yarn (or any textile product) is originating is to forget about the "fiber forward" concept and look at the actual rule of origin in General Note 12 (t). Look, for example, under HTS 5205 (cotton yarn with more than 85% cotton):

A change to headings 5201 through 5207 from any other chapter, except from headings 5401 through 5405 or 5501 through 5507.

Since cotton fibers and cotton yarn are in the same chapter, this rule indicates that a foreign fiber spun into yarn would not be an adequate change in tariff classification. Neither would a shift from the other two groups shown, which are man-made filaments and fibers.

Let's look at three examples of cotton yarns spun in Mexico:

Example 1:
Cotton yarn (HTS 5205) is spun in Mexico from fibers (HTS 5201) which wholly originate in Mexico.

Would this originate, and under what rule? This is a trick question in the sense that it is a product that is wholly obtained or produced in Mexico - Rule A. There is no need to look at the Specific NAFTA Preference Rules because we're still in Rule A, not Rule B. No change in tariff classification is required. This example simply reminds us that yarn spun from Mexican cotton can qualify.

Example 2:
Cotton yarn (HTS 5205) is spun in Mexico from fibers (HTS 5201) which are imported from Egypt.

Following the rule of origin for the yarn, note that a change in tariff classification from 5201 to 5205 is not sufficient. Therefore this yarn would not originate.

Example 3:
Blended yarn (5205.13) imported from Mexico consisting of 90% cotton fibers originating in Mexico, blended with 10% imported polyester staple fiber imported from Japan under HTS 5506.20.

In this case, the Japanese staple fibers fall within the range of nonallowable change in tariff classification, so this yarn does not originate either.

What if our last example were only 5% polyester? Remember the de minimis rule: fibers present in amounts of 7% or less need not undergo the change in tariff classification. Therefore such a yarn would originate.

Before we move on to fabrics, we should again point out that there are many exceptions to the so-called "fiber forward" rule for yarns, including wool yarns, silk yarns and certain specialty yarns such as chenille yarns. Always check the Specific NAFTA Preference Rules (HTSUSA General Note 12 (t)) to be sure.

D. Specific Rules Pertaining to Fabric

The negotiators' general approach in designing specific rules of origin for most fabric was "yarn forward", which means that fabric must be produced from yarn made in a NAFTA country in order to be "originating" and have full access to benefits of the agreement. But again, this is just a guideline and one always has to refer to General Note 12 (t) (the Specific NAFTA Preference Rules) for the specific requirement that applies to the good in question. There are many exceptions to the so-called "yarn forward" rule, such as for silk fabrics, which are fabric forward (fabric must be formed in the NAFTA territory), and certain special fabrics, which are fiber forward. But let's look first at a Specific Rule of Origin that is yarn forward:

A change to headings 5512 through 5516 from any heading outside that group, except from headings 5106 through 5110, 5205 through 5206, 5401 through 5404 or 5509 through 5510.

This is the rule for the whole group of woven man-made staple fiber fabrics, and it says that such fabric, in order to originate, cannot be made from foreign wool, cotton or man-made fiber yarns, or from man made filaments. But any other change is acceptable. In other words, the yarn must be formed (spun or extruded) in the NAFTA territory.

Let's look at a couple of examples of fabrics that fall under this rule:

Example 4:
Polyester fabric (HTS 5512.12) is woven in Mexico, from yarn (HTS 5509.21) that was spun in Mexico, from fibers that were made in and imported from Japan under HTS 5503.20.

This product qualifies because the change in tariff classification that occurred - foreign HTS 5503 fiber to HTS 5512 fabric - is allowed under the Specific Rule of Origin. That rule could be called "yarn forward" in the sense that the yarn has to be spun in the NAFTA territory.

Let's look at a variation on the theme, again for a fabric of heading 5512:

Example 5:
Polyester fabric (HTS 5512.12) is woven in Mexico, from yarn (HTS 5509.21) that was spun in Malaysia.

Here the change in tariff classification we are concerned with is 5509 yarn to 5512 fabric. Since that shift is not allowed under this rule, the fabric does not originate.

Without going into more obscure examples, we should again point out that for fabrics there are many exceptions to the so-called yarn forward rule. For instance silk or linen fabric can be knit or woven from foreign yarns, and certain specialty yarns such as metalized yarns and chenille yarns can be made into fabrics without regard to the yarn forward rule. So again, be careful when using the term "yarn forward" - it does not always work! As we have already said, check the Specific NAFTA Preference Rules (HTSUSA General Note 12 (t)) to be sure.

E. Specific Rules Pertaining to Apparel

The general intent of the rule of origin for apparel and other articles is the same as what we discussed for fabric (i.e. "yarn forward," or the yarn is spun or extruded in the NAFTA territory). And just as we did when talking about the fabric, at the risk of beating it to death, we must point out that yarn forward is just a guideline, there are many exceptions to this so-called "rule."

Many of the specific rules of origin for Chapter 61 and 62 require the same tariff classification change. Here is an example:

A change to headings 6105 through 6106 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54, or headings 5508 through 5516 or 6001 through 6002, provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more of the NAFTA parties.

This rule indicates that for a knit blouse to qualify as NAFTA originating, any wool yarns, cotton yarns, man-made fiber yarns, and most vegetable fiber yarns, and any blended yarns in chief weight of one of those fibers, must be spun or extruded in the NAFTA territory. This same list of HTS heading numbers appears over and over again in chapter 61 and 62. Chapter 62 has one additional group of numbers (pile, tufted or terry woven fabrics, as illustrated in the chart below).

The table on the following page summarizes which tariff changes are generally NOT sufficient to make a garment originating (subject to some exceptions which will be discussed below):

"NON-ALLOWABLE" TARIFF CHANGES FOR APPAREL	
For Chapter 61 & 62:	
Headings 5106-13	Wool yarn and woven fabric
Headings 5204-12	Cotton yarn and woven fabric
Headings 5307-08	Vegetable fiber yarn except flax
Headings 5310-11	Woven vegetable fiber fabric except linen
Chapter 54	All MMF filament fiber, yarn, & woven fabric
Headings 5508-16	MMF staple yarn and woven fabric
Headings 6001-02	All knit fabric
For Chapter 62 only:	
Headings 5801-02	Pile, tufted or terry woven fabrics

The table on the following page shows which tariff changes ARE generally sufficient to make a garment originating (subject to some exceptions which will be discussed below):

"ALLOWABLE" TARIFF CHANGES FOR APPAREL	
Chapter 50	All fibers, yarns and woven fabric of silk
Headings 5101-05,	Wool fibers
Headings 5201-03	Cotton fibers
Headings 5301-06, 5309	Vegetable fibers and linen fiber, yarn & fabric
Headings 5501-07	MMF staple fibers
Headings 5602-03	Felts and nonwovens
Headings 5604-06	Rubberized, metalized, gimped, chenille, loopwale yarn
Headings 5804, 5806	Lace, net, narrow woven fabric
Headings 5809-11	Metalized woven fabric, embroidered or quilted fabric
Headings 5903, 5906	Plastic-coated and rubberized fabric

Keep in mind that these tables are just general guides and are by no means universal; always consult the Specific Rules to confirm what is gleaned from these tables.

In order to understand these rules, let's look at an example (refer to the Specific Rule of Origin for heading 6105-6106 on at the beginning of this section):

Example 6:
A knit blouse of heading 6106 is made in Mexico of 100% wool yarn that was imported from Korea.

This blouse would not originate because the wool yarn is classified in heading 5106, which is one of the excluded headings.

Example 7:
A knit blouse of heading 6106 is made in Mexico of 100% silk yarn imported from Korea

This silk blouse would originate, since the silk yarn, classified in heading 5004 is not one of the excluded headings.

As noted earlier, this is the general rule which covers most of the headings in chapters 61 and 62. There are a few exceptions. These include brassieres, certain knit intimate apparel and pajamas, and certain men's and boys' woven shirts.

We always have to read the Specific NAFTA Preference Rules very closely to see if any special notes apply. We should just take a look at General Note 12(t) and notice what special rules might be in effect for articles and apparel.

Chapters 61 and 62 each have three general rules that apply to certain garments.

The first concerns visible lining, and is rule 1 in both chapters:

A change to any of the following headings or subheadings for visible lining fabrics:

> 5111 through 5112, 5208.31 through 5208.59, 5209.31 through 5209.59, 5210.31 through 5210.59, 5211.31 through 5211.59, 5212.13 through 5212.15, 5212.23 through 5212.25, 5407.42 through 5407.44, 5407.52 through 5407.54, 5407.60, 5407.72 through 5407.74, 5407.82 through 5407.84, 5407.92 through 5407.94, 5408.22 through 5408.24 (excluding tariff items 5408.22.10, 5408.23.11, 5408.23.21 or 5408.24.10), 5408.32 through 5408.34, 5512.19, 5512.29, 5512.99, 5513.21 through 5513.49, 5514.21 through 5515.99, 5516.12 through 5516.14, 5516.22 through 5516.24, 5516.32 through 5516.34, 5516.42 through 5516.44, 5516.92 through 5516.94, 6001.10, 6001.92, 6002.43 or 6002.91 through 6002.93, from any other heading outside that group.

This rule applies only to those specific garments for which it is listed, and includes jackets, suits, coats, skirts, and ski suits. For these specific garments, the rule requires that in order to qualify as NAFTA originating, both the garment and its lining must qualify. The rules for lining require that the lining fabric be made in a NAFTA territory if the fabric is cotton, wool, and most man made fibers. Silk linings and vegetable fiber linings are not listed, therefore, in those cases, the lining fabric need not be considered.

Example 8:
A cotton skirt of heading 6204.52 that otherwise qualifies, has an acetate lining constructed from fabric of 5516.12 which was imported from Taiwan.

The Rule of Origin for heading 6204.52 states

A change to subheadings 6204.51 through 6204.53 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54, or headings 5508 through 5516, 5801 through 5802 or 6001 through 6002, provided that:

(A) the good is both cut and sewn or otherwise assembled in the territory of one or more of the NAFTA parties, and

(B) the visible lining fabric listed in chapter rule 1 for chapter 62 satisfies the tariff change requirements provided therein.

Part B of this rule requires the visible lining fabric to originate as defined in the lining rule (Chapter 61 rule 1), in order for the garment itself to qualify. Since the lining fabric does not meet this requirement (even though the outer part of the skirt meets its part of the rule), this skirt would not be considered originating.

Example 9:
A cotton skirt of heading 6204.52 that otherwise qualifies, has an acetate lining constructed from fabric of 5516.12 made in Mexico of acetate yarns imported from Taiwan. These yarns were classified in heading 5510.

In this case, the skirt would qualify as NAFTA originating, because the foreign yarn underwent the required tariff change in Mexico in the process of becoming the lining fabric.

Chapter 61 rule 2 and Chapter 62 rule 3 are also identical rules:

For purposes of determining the origin of a good of this chapter, the rule applicable to that good shall only apply to the component that determines the tariff classification of the good, and such component must satisfy the tariff change requirements set out in the rule for that good. If the rule requires that the good must also satisfy the tariff change requirements for visible lining fabrics listed in chapter rule 1 for this chapter, such requirement shall only apply to the visible lining fabric in the main body of the garment, excluding sleeves, which covers the largest surface area, and shall not apply to removable linings.

This rule is composed of two parts. The first part of this rule is concerned with garments made up of differing components; the other part contains additional information on linings. Since we have just been considering the topic of linings, we will look at the second part first. This rule contains several additional facts about linings:

> The lining rules do not apply to removable linings.
>
> If a lining is made up of more than one fabric, only the fabric of the main body of the garment is to be considered - sleeves are excluded.
>
> If the main body of the garment, excluding sleeves, contains two or more different fabrics, the lining rule applies to the fabric that covers the greatest surface area.

Example 10:
An otherwise qualifying denim jacket of 6201.92.2031 is lined with a wholly Mexican cotton flannel (5209.32) in the main body of the garment and a Korean woven acetate lining in the sleeves.

The rule of Origin for subheadings 6201.91-6201.93 requires

A change to subheadings 6201.91 through 6201.93 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54, or headings 5508 through 5516, 5801 through 5802 or 6001 through 6002, provided that:

> (A) the good is both cut and sewn or otherwise assembled in the territory of one or more of the NAFTA parties, and
>
> (B) the visible lining fabric listed in chapter rule 1 for chapter 62 satisfies the tariff change requirements provided therein.

Because of part B of this rule, we must at least consider the lining rule. However, only the acetate sleeve lining is from a non-NAFTA source. Chapter 62 rule 3 says that we need not consider this lining because it is not in the main body of the garment. Hence, this jacket is originating.

The first part of Chapter 61 rule 2 (which is identical to Chapter 62 rule 3) concerns the origin determination of garments constructed from differing components. It states that "the rule applicable to the good shall only apply to the component that determines the classification of the good". By "component" the agreement means a portion of a garment or article; it does not refer to blended fibers or mixed yarns.

Example 11:
A dress constructed from a knit top and a woven skirt. The knit top is 100% cotton, which was grown, spun into yarn, and knit into fabric in Mexico. The woven skirt portion is 100% polyester, which was imported from Taiwan in fabric form.

If we assume that the essential character is provided by the knit portion, the dress would be classified in heading 6104.42.0010. The top portion meets the requirement of rule 12(b)(I) because it is wholly obtained or produced in the NAFTA territory. Although the imported polyester fabric would not meet the rule, it is ignored based on rule 2 in chapter 61 and rule 3 in chapter 62. Therefore, the dress would originate.

If we assume that the essential character is provided by the woven skirt portion, the dress would be classified in heading 6204.43.4030. The skirt portion would not meet the requirement of 12(t), because the change from polyester woven fabric to a dress is not acceptable. Therefore, the garment would not originate.

Finally, if we assume that neither portion determines the essential character, and the garment is classified based on GRI 3(c), the number that comes last in the tariff. Again, the dress would be classified in 6204.43.4030. Since the skirt portion determines the classification, as with the second part of the example, the dress would not originate.

This principle applies only to components, not to fibers or yarns. For a garment made from blended fibers or yarns, all yarns and all fibers must be considered.

Rule 3 of Chapter 61 is a stricter rule of origin for man-made fiber sweaters from Mexico:

For purposes of trade between the United States and Mexico, sweaters of subheadings 6110.30, 6103.23 or 6104.23, and sweaters otherwise described in subheading 6110.30 that are classified as part of an ensemble in subheadings 6103.23 or 6104.23, shall be treated as an originating good only if any of the following changes in tariff classification is satisfied within the territory of one or more of the NAFTA parties:

> (a) A change to tariff items 6110.30.10, 6110.30.15, 6110.30.20 or 6110.30.30 from any heading outside chapter 61 other than headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311, any heading of chapters 54 or 55 or headings 6001 through 6002, provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more of the NAFTA parties; or
>
> (b) A change to subheading 6110.30 from any heading outside chapter 61 other than headings 5106 through 5113, 5204 through 5212, 5307 through 5308, 5310 through 5311, any heading of chapter 54, headings 5508 through 5516, or 6001 through 6002, provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more NAFTA parties.

This rule overrides the rules of origin for the specific HTS number. The rule of origin for U.S. or Mexican man-made fiber sweaters is fiber forward rather than yarn forward, which means that for the sweater to originate, the man-made fibers must originate in Mexico or the U.S.

The rule, as it is written in the HTS, however, is somewhat confusing because it only cites the HTS numbers to 8 digit, not the 10 digit classification for the sweaters. Therefore, when using this rule, keep in mind that it refers only to those garments classified at the statistical - 10 digit level - as sweaters.

The rule also covers sweaters of synthetic fibers that are parts of ensembles, and classified in 6103.23 and 6104.23. The rule does not cover sweaters of artificial fibers that are part of an ensemble and classified in 6103.29 or 6104.29.

Note 2 to Chapter 62 lists some fabrics - velveteen, corduroy, Harris Tweed, and Batiste fabrics - which follow a "cut and sew" rule. This overrides the specific rules listed by HTS number in chapter 62:

Apparel goods of this chapter shall be considered to originate if they are both cut and sewn or otherwise assembled in the territory of one or more of the NAFTA parties and if the fabric of the outer shell, exclusive of collars or cuffs, is wholly of one or more of the following:

(A) Velveteen fabrics of subheading 5801.23, containing 85 per cent or more by weight of cotton;

(B) Corduroy fabrics of subheading 5801.22, containing 85 per cent or more by weight of cotton and containing more than 7.5 wales per centimeter;

(C) Fabrics of subheadings 5111.11 or 5111.19, if hand-woven, with a loom width of less than 76 cm, woven in the United Kingdom in accordance with the rules and regulations of the Harris Tweed Association, Ltd., and so certified by the Association;

(D) Fabrics of subheading 5112.30, weighing not more than 340 grams per square meter, containing wool, not less than 20 per cent by weight of fine animal hair and not less than 15 per cent by weight of man-made staple fibers; or

(E) Batiste fabrics of subheadings 5513.11 or 5513.21, of square construction, of single yarns exceeding 76 metric count, containing between 60 and 70 warp ends and filling picks per square centimeter, of a weight not exceeding 110 grams per square meter.

This rule says that garments of these specific fabrics only have to be cut and sewn in one or more of the NAFTA territories. Thus, if a good is classifiable in Chapter 62 and is cut and sewn in one of the territories from one of these fabrics, the garment originates. These fabrics have been referred to as "Short Supply" fabrics because they are not produced in great quantities in the U.S. And the fact that they are in short supply here is the reason why garments made of these fabrics have a liberal "cut and sew" rule rather than the general "yarn forward" rule.

Of course, all of the above examples we've been going through illustrate Rule B of the NAFTA Preference Rules. That is what we'll be spending most of our time on. But a textile product might also qualify under Rule C.

To review, rule C states:

they are goods produced entirely in the territory of Canada, Mexico and/or the United States exclusively from originating materials;

thus, if you have a raw material, an intermediate product, and a final product, the final product will qualify if the intermediate product, by its rule of origin, becomes an originating good.

Example 12:
Men's jacket of coated fabric. Knit fabric of heading 6002 is imported into Mexico from Korea. In Mexico, the fabric is coated, and becomes a fabric of heading 5903. The fabric is then cut and sewn into a jacket in Mexico. The Jacket is classified in heading 6113.

The tariff shift requirement for heading 6113 is:

A change to headings 6113 through 6117 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapter 54, or heading 5508 through 5516 or 6001 through 6002, provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more of the NAFTA parties.

According to this rule, the change from knit fabric of 6002 to a jacket of 6113 is not an acceptable tariff shift. Rule B is not applicable. However, in this case, there is an intermediate product - the coated fabric. The rule for the coated fabric classified under heading 5903 is:

A change to headings 5903 through 5908 from any other chapter, except from headings 5111 through 5113, 5208 through 5212, 5310 through 5311, 5407 through 5408 or 5512 through 5516.

Under this rule, a change from the imported fabric classified under heading 6002 to coated fabric of 5903 would result in the coated fabric being an originating good. Based on rule C, the final product, the jacket, would also originate.

In the textile and apparel chapters, this type of example is rare. The originating rules are written, in general, so that both the intermediate products and final products have similar rules.

F. Specific Rules Pertaining to Articles

Knowing the general "yarn forward" approach to apparel, we can look at other articles and see that the pattern is generally (but not always) the same. Let's look at examples of some specific products.

Example 13:
Curtains (HTS 6303.12) are cut and sewn from fabric (HTS 6002.43) which is knitted in Canada from yarns (HTS 5509.21) spun in Mexico from polyester fiber (HTS 5503.20) imported from China.

The Specific Rule of Origin states:

A change to heading 6303 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5307 through 5308 or 5310 through 5311, chapters 54 through 55, or headings 5801 through 5802 or 6001 through 6002, provided that the good is both cut (or knit to shape) and sewn or otherwise assembled in the territory of one or more of the NAFTA parties.

Reading the rule and trying to apply it to this curtain, we realize that the key shift here - from 5503 fiber to 6303 curtains - is not allowed under this rule. So in effect, at least for curtains of man-made fibers, the rule is fiber forward, not yarn forward. The fibers would have to be extruded in the NAFTA territory in order for these curtains to originate. This differs from the rule for apparel we looked at earlier - that rule would have allowed a shift from fiber to finished good. This points up the importance of always consulting the Specific Rule of Origin in HTSUSA General Note 12(t).

The only way these curtains could qualify under this rule, it would appear, would be if the resins (chapter 39 plastics), which are used to make the polyester fiber, were imported.

In the Specific NAFTA Preference Rules for chapter 57 (carpets), just as for the sweaters, there are stricter rules of origin for carpets from Mexico:

A change to headings 5701 through 5705 from any other chapter, except from headings 5106 through 5113, 5204 through 5212, 5308 or 5311, chapter 54, or headings 5508 through 5516; provided that for purposes of trade between the United States and Mexico, a good of chapter 57 shall be treated as an originating good only if any of the following changes in tariff classification were satisfied within the territory of one or more of the parties:

(a) A change to subheadings 5703.20 or 5703.30 or heading 5704 from any heading outside chapter 57 other than headings 5106 through 5113, 5204 through 5212, 5308, 5311 or any headings of chapters 54 or 55; or

(b) A change to any other heading or subheading of chapter 57 from any heading outside that chapter other than headings 5106 through 5113, 5204 through 5212, 5308, 5311, any heading of chapter 54 or headings 5508 through 5516.

In a nutshell, this rule says:

The rule of origin for U.S. or Mexican man-made fiber tufted or felt carpets is fiber forward rather than yarn forward, which means that for the carpet to originate, the man-made fibers must originate in Mexico or the U.S.

Example 14:
A tufted carpet (HTS 5703.20) is made in Mexico from a Malaysian jute fabric (HTS 5310.10) which is tufted (in Mexico) with yarn (HTS 5509.11) that is spun in the U.S. from Taiwanese nylon staple fibers (HTS 5503.10).

Considering just the first part of the rule of origin (see above), this carpet would appear to be originating. The two foreign materials, Malaysian fabric of 5310 and Taiwanese fibers of 5503, are not among the exceptions listed within the origin rule.

However, for trade between Mexico and the U.S., we now know that there is a special rule which applies to subheading 5703.20, which does not allow fiber of 5503 - as we said, the effect of this new rule was to make this type of carpet "fiber forward" instead of yarn forward. Hence, under this special rule the carpet is non-originating.

3. Country of Origin Rules for Textile and Apparel Products

A. New Country of Origin Rules (Section 102.21, CR)

Following the U.S. legislation that implemented the Uruguay Round of trade agreements, there are entirely new country of origin rules for textiles effective July 1, 1996. These rules determine country of origin for all countries (excluding Israel, but including the NAFTA countries), for purposes of marking, duty rate determination, applicability of Merchandise Processing Fee (MPF) and quota/visa determination.

We would use the Country of Origin rules in cases where the goods do originate, but where we still need to determine the country of origin to determine what duty rate (Mexico or Canada) applies. We also use these rules to determine the country of origin of any good, from any country except Israel, for purposes of marking, duty rate determination, applicability of the Merchandise Processing Fee (MPF), and for determining whether quota and visa requirements apply (see exceptions discussed under "C. NAFTA Preference Override" and "D. U.S. Goods Sent Abroad for Processing," below).

Let's take a look at the regulations which implement these rules, as they now exist in new section 102.21, CR:

(C) General rules. Subject to paragraph (d) of this section, the country of origin of a textile or apparel product shall be determined by sequential application of paragraphs (c)(1) through (5) of this section and, in each case where appropriate to the specific context, by application of the additional requirements or conditions of §§ 102.12 through 102.19 of this part.

> (1) The country of origin of a textile or apparel product is the single country, territory, or insular possession in which the good was wholly obtained or produced.
>
> (2) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) of this section, the country or origin of the good is the single country, territory, or insular possession in which each foreign material incorporated in that good underwent an applicable change in tariff classification, and/or met any other requirement, specified for the good in paragraph (e) of this section.
>
> (3) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1) or (2) of this section:
>
> > (i) If the good was knit to shape, the country of origin of the good is the single country, territory, or insular possession in which the good was knit; or

(ii) Except for goods of heading 5609, 5807, 5811, 6213, 6214, 6301 through 6306, and 6308, and subheadings 6209.20.5040, 6307.10, 6307.90 and 9404.90, if the good was not knit to shape and the good was wholly assembled in a single country, territory, or insular possession, the country of origin of the good is the country, territory, or insular possession in which the good was wholly assembled.

(4) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1), (2) or (3) of this section, the country of origin of the good is the single country, territory, or insular possession in which the most important assembly or manufacturing process occurred.

(5) Where the country of origin of a textile or apparel product cannot be determined under paragraph (c)(1), (2), (3) or (4) of this section, the country of origin is the last country, territory, or insular possession in which an important assembly or manufacturing process took place.

(d) *Treatment of sets*. Where a good classifiable in the HTSUS as a set includes one or more components that are textile or apparel products and a single country of origin for all of the components of the set cannot be determined under paragraph © of this section, the country of origin of each component of the set that is a textile or apparel product shall be determined separately under paragraph (c) of this section.

SHORTHAND VERSION OF
COUNTRY OF ORIGIN RULES FOR TEXTILES:

C1: Wholly obtained or Produced
C2: Tariff Change or Other Change
C3i: Country where Knit to Shape
C3ii: Country where Wholly Assembled
C4: Country of Most Important Assembly or Manufacturing
C5: Country of Last Important Assembly or Manufacturing
D: "Set" Rule

The first thing to notice is that the NAFTA marking rules of sections 102.12 through 102.17 and 102.19, in some cases, apply to textiles for which section 102.21 is being used. Keeping this in mind, we will look at the rules themselves.

The first Country of Origin Rule, C1, is the most obvious. If a good is wholly obtained or produced in one NAFTA country, that country is the country of origin.

Rule C2 says that if there are foreign materials, the country of origin is the country in which each of those materials underwent a specified change in tariff classification, or any other specified change. We say "any other specified change" because not all of the Specific Country of Origin Rules are in terms of changes in tariff classification. For instance, for embroidery without visible ground of subheading 5810.10, the rule states,

The country of origin of goods of subheading 5810.10 is the single country, territory or insular possession in which the embroidery was performed.

Most rules, however, do specify specific changes in tariff classification that are required. But none of them require Regional Value Content.

Example 15:
Textile covered rubber thread classified in heading 5604. The product was made in Mexico from Taiwanese staple fiber synthetic yarn of HTS 5509 and Malaysian rubber thread of HTS 4007.

The Specific Country of Origin Rule for goods of heading 5604 states:

If the textile component is of staple fibers, a change of those fibers to heading 5604 from any other heading, except from heading 5004 through 5006, 5106 through 5110, 5204 through 5207, 5306 through 5308, and 5508 through 5511, and provided that the change is the result of a spinning process.

The country of origin is Taiwan based on Country of Origin Rule C2.

The remaining rules tell us, in sequence, what to do only if after applying rules C1 and C2 we still can't determine the country of origin.

Rule C3 Has two parts, C3i and C3ii. C3i says that if the good was knit to shape, the country of origin is the country were the good was knit.

Example 16:
A ladies' acrylic sweater of heading 6110 is made in Mexico from sleeves and a body knit to shape in China, and other minor parts made in Mexico. All of the parts are classified in heading 6117.

Obviously this good is not wholly obtained or produced in one country, so rule C1 does not apply. Considering rule C2, the pertinent part of the Specific Country of Origin Rule for heading 6110 reads:

If the good is knit to shape, a change to heading 6101 through 6117 from any heading outside that group, provided that the knit-to-shape components are knit in a single country, territory or insular possession.

The sweater fails to meet the rule, because the Chinese knit-to-shape components are classified within the excepted group. Therefore based on rule C3i, the country of origin is China, the country where the parts were knit to shape.

C3ii, the next rule to consider, says that, except for certain listed products, the country of origin is the single country where the goods were wholly assembled. This rule does not apply to knit-to-shape products. The tariff shift rules (Rule C2) have been structured to catch, to the extent possible, all assemblies that would confer origin. But if there is an assembly that is not covered by the tariff shifts, then rule C3ii would apply.

Rule C4 covers the case where applying the preceding rules does not result in a single country of origin. Popularly called the "most important country" rule, it states that the country of origin is where the "most important" assembly or manufacturing process took place.

Example 17:
A quilt (9404.90.8505) is assembled in Mexico from a patchwork fabric made in China, a plain backing fabric made in Singapore, and batting made in Taiwan.

This good would not be wholly obtained or produced. Considering rule C2, the Specific Country of Origin Rule for this product states:

The country of origin of a good classifiable in subheading 9404.90 is the country, territory or insular possession in which the fabric comprising the good was formed by a fabric-making process.

The good fails to meet this rule because of the dual sources for the fabric. Rule C3i does not apply because this good is not knit to shape, and rule C3ii does not apply because the good is not wholly assembled in one country. Following rule C4, we must decide where the "most important" assembly or manufacturing process took place. Since the most important process in this example is the production of the patchwork material that forms the top side of this quilt, the quilt is a Chinese product regardless of the subsequent processing in Mexico, following Country of Origin Rule C4.

Rule C5 covers the case where you cannot say that the "most important" assembly took place in one country. In other words, two or more operations are considered to be most important, but neither is more important than the other. In such a case, the "last important country" rule states that the country of origin is the last country in which an important assembly or manufacturing process took place.

Example 18:
A pillow shell (6307.90.8945) is made from one piece produced and cut in China and an identical piece produced and cut in Hong Kong. The two equally-sized cut pieces are sewn together on three and a half sides in Mexico to form the shell.

Based on Rule C5, the country of origin is Mexico, the country in which the last important assembly or manufacturing process took place.

There are several other special considerations to be aware of, that apply to the Country of Origin Rules. These involve the treatment of sets, the "NAFTA Preference Override," and U.S. goods sent abroad for processing:

B. Sets

If one or more components in a set are textile articles and there is no single country of origin for these components, the country of origin for each textile component of the set is determined separately. A composite good will continue to be considered as one combined good.

C. NAFTA Preference Override

Any NAFTA preference override rules currently in existence will continue to be applied if a NAFTA preference is claimed. (Note: portions of the regulations dealing with this issue were not yet finalized at the time of publication. Readers should refer to the final version of 19 CFR 102.12-102.19.)

Example 19:
China is the country of origin of comforter shells and also the country of origin of down used to fill the shells. Both of these components are sent separately to Canada where the down is inserted into the shells and the comforter finished.

In this example, applying the rules in section 102.21, China would be the country of origin of the finished comforter. However, the NAFTA marking rules provide for an override rule that applies if a NAFTA duty preference claim is made. Under the facts in this example, the processing in Canada (a NAFTA country) satisfies the NAFTA Preference Rules. Therefore, if a claim is made for NAFTA preference at the time of entry (or within one year), the country of origin is Canada. The NAFTA Preference Rule overrides the new country of origin rules in determining the country of origin for NAFTA products.

D. U.S. Goods Sent Abroad for Processing

When U.S. produced textile goods are sent abroad for processing and are advanced in value:

a. Note 2(a) to Chapter 98, Subchapter 2 applies for duty assessment;

b. Customs Regulation 12.130(c) applies for quota and visa purposes; and

c. Customs Regulation 12.130(c) also applies for marking purposes; however, Customs is currently reconsidering this particular issue.

(Note: portions of the regulations dealing with this issue were not yet finalized at the time of publication. Readers should refer to the final version of 19 CFR 102.12-102.19.)

4. Mexican Special Regime

The benefits of Mexican Special Regime are that the goods are not subject to an absolute quota or to visa requirements, and that they are duty free. At least at the beginning of NAFTA when the staged rate reductions (and MPF for Mexico) are in effect, this benefit may be greater than for goods that actually originate. These benefits only apply to goods assembled in Mexico. An example at the end of this section illustrates this point.

Some of the new features of Special Regime, that differ from the prior program are:

- There is a new HTS # 9802.00.9000.
- The program now applies to all textile products.
- There are some post-assembly processes which were not previously allowed that are now allowed.

The basic requirements for Mexican Special Regime can be found in HTS 9802.00.9000, cited in the box at the top of the next page.

The Mexican Special Regime has the following requirements:

- the product must be assembled in Mexico
- the fabric must be wholly formed in the U.S., in other words, the yarn must be either knitted, woven or otherwise constructed (spunbonded) into fabric. That means that foreign greige fabric that is printed and dyed, then cut in the U.S. does not qualify
- the fabric must be cut into components in the U.S.

9802.00.9000

Textile and apparel goods, assembled in Mexico in which all fabric components were wholly formed and cut in the United States, provided that such fabric components, in whole or in part,

(a) were exported in condition ready for assembly without further fabrication,

(b) have not lost their physical identity in such articles by change in form, shape or otherwise, and

(c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process;

provided that goods classifiable in chapters 61, 62 or 63 may have been subject to bleaching, garment dyeing, stone-washing, acid-washing or perma-pressing after assembly as provided for herein.

The components, in whole or in part, must:

- **!** be exported in condition ready for assembly without further fabrication;
- **!** have not lost their physical identity in such articles by change in form, shape or otherwise, and
- **!** have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process

One of the beneficial changes concerns post production procedures. Under Special Regime, a textile article may be bleached, garment dyed, stone washed, acid washed, enzyme washed or permanently pressed after assembly. These processes disqualified an article under the prior Special Regime program.

Some of the prior requirements, mostly procedural, are still in place:

- **!** Importers will be obligated to keep on file proof that the fabric is U.S. formed (yarn made into fabric in the U.S.).

- **!** Accurate records must be maintained to show the amount of cut components exported and the finished goods imported.

- **!** The requirement that the cost of findings, trimmings and certain elastic strips of foreign origin do not exceed 25% of the cost of the components of the assembled product, remains unchanged.

Procedural differences:

- **!** ITA-370P form is not required for goods classified under HTS number 9802.00.9000

- **!** In order to participate, an importer must certify that the finished goods are sewn in Mexico from U.S. formed and cut fabric.

Example 20:
Scenario I: A woman's cotton knit blouse originates under the NAFTA. It is sewn in Mexico from components which were cut in Mexico from 100% U.S. fabric (cotton was grown in the U.S.; it was spun into yarn and knit into fabric in the U.S.).

Since the blouse originates, there are no quota/visa restrictions. However, this falls into a staged rate reduction and at the present would be subject to a reduced rate. Currently, the column 1 rate is 20.9% - the NAFTA rate is 13.2%. Also, since under section 102.21, CR the country of origin is Mexico, this garment will be subject to the MPF, which continues until 1999 for goods of Mexico.

Example 21:
Scenario II: The above blouse is sewn in Mexico from components formed and cut in the U.S. and exported in accordance with the provisions of the Mexican Special Regime Program.

It would still be an originating blouse, however, it also meets the requirements of special regime. Therefore, instead of a duty rate of 13.2%, it would be duty free, and exempt from MPF as an article provided for under chapter 98 (only 9802.0060 and 9802.0080 are excluded from this exemption).

Example 22:
Scenario III: The yarn in the above blouse is imported from outside the NAFTA territory, but was knit in the U.S., cut into components in the U.S. and sewn in Mexico.

The garment would not originate, so if Special Regime did not exist, the blouse would be subject to a 20.9% duty rate. In addition, the blouse would be subject to an absolute quota. Instead, because the fabric was made and cut in the U.S., this blouse qualifies for special regime. It would not be subject to quota and would be free of duty and MPF.

5. Tariff Preference Levels (TPLs)

There are three conditions or requirements for a good to qualify for a reduced rate under the TPL's:

- it has to meet the qualifications set out in Section XI, additional U.S. notes 3-6;
- it must be accompanied by a certificate of eligibility; and
- it must be within the annual quantity limits set out in Section XI, additional U.S. note 3, 4 or 5 depending on the good.

The specific rules are broken out as follows:

- Note 3 covers apparel and certain textile articles
- Note 4 covers certain fabric and made-up articles
- Note 5 covers certain yarns

SHORTHAND VERSION OF TPL's

CA apparel cut or knit to shape & sewn.

MX apparel cut or knit to shape & sewn, except for certain:
blue denim or oxford cloth,
MMF sweaters,
certain garments of circular knit fabric.

MX apparel/articles assembled from U.S. cut fabric, except for certain:
blue denim or oxford cloth,
MMF sweaters,
certain garments of circular knit fabric.

CA or MX cotton or MMF fabric, or made-up articles.

CA or MX spun cotton or spun MMF yarns.

Each rule contains separate requirements for Canada and Mexico and separate quantity levels for each country. For Mexico there is an additional rule and a separate quantity for apparel and some articles assembled in Mexico from fabric cut in the U.S.

Specifically, the rules are:

- For apparel from Canada the qualifying rule is the garment must be cut or knit to shape and sewn or otherwise assembled in Canada from foreign fabric or yarn [Note 3(a)]

  (The specific quantity level for goods qualifying under this rule is found in Note 3(f).)

- For Mexican apparel, the qualifying rule is the garment must be cut or knit to shape and sewn or otherwise assembled from foreign fabric or yarn [Note 3(b)]. Exceptions:

  blue denim over 200 grams e.g., denim jackets and jeans

  woven oxford fabric of an average yarn number less than 135 metric number e.g., men's dress shirts

  mmf sweaters

  certain garments of circular knit fabric of yarn number equal to or less than 100 metric number e.g., cotton and mmf underwear, T-shirts, tank tops, also pajamas (fine knit)

  A garment made from these fabrics, even if the garment is cut and sewn in Mexico, would <u>not</u> qualify for TPL. These exceptions are spelled out in detail in notes 3 (d) and (e).

  (Quantity levels allowed for this TPL are found in Note 3(g)(I))

- For Mexico there is a separate TPL established for apparel and certain textile articles that are sewn or otherwise assembled in Mexico under HTS 9802.00.8055. This is for foreign fabric cut in the U.S. and exported to Mexico for assembly. There are certain exceptions, the same exceptions as noted above. If a TPL fills for this HTS number merchandise must be entered under HTS 9802.00.8065. (see Section XI, additional U.S. Note 3(c)).

  (Quantity limits for this TPL can be found in note 3(g)(ii))

- Note 4 covers cotton or man-made fiber fabric or made-up articles classified in Chapters 52-55, 58, 60 and 63 that are woven or knit in Mexico or Canada from foreign spun yarns. This note also applies to articles of HTS# 9404.90 (bedding)that are finished and cut and sewn or otherwise assembled from foreign fabrics.

- Note 5 covers spun cotton and spun mmf yarns. Each of these rules indicates certain exceptions.

- There is a special arrangement with Canada for reporting TPL's that apply for fabric and made-up textiles.

- For textile articles that are not qualifying because certain non-originating textile materials do not undergo the applicable change in tariff classification as set out in the Agreement, but where such materials are 50% or less by weight of the materials of that textile article, only 50% of the square meter equivalent (SME) is to be charged to the TPL. If over 50%, then 100% of the SME will be charged (see Section XI, additional U.S. Note 4(c)).

Example 23:
A man's pair of trousers (6103.41) constructed in Mexico from Italian knit fabric, 70% wool, 30% polyester.

This garment is not originating because the basic Rule of Origin was yarn-forward. However, in light of the TPL rules, if a good classified in Chapters 61 and 62 is both cut(or knit to shape) and sewn or otherwise assembled in Mexico from foreign fabric or yarn, it can be entitled to TPL treatment. The exceptions to this rule spelled out in Note 3(d) and 3(e) do not apply. So these trousers which are non-originating, are entitled to the lower NAFTA rates, up to the TPL limit that has been set.

Procedural Requirements

The claim for Tariff Preference Level will be based upon a Certificate of Eligibility:

- Mexican and Canadian governments must issue a certificate of eligibility

- Do not confuse this with the documentation required for goods considered to be originating. The certificate of eligibility is issued by the foreign government, the certificate of origin is not.

- Without this certificate non NAFTA qualifying textile merchandise will be dutiable at the column 1 rate.

In those cases where an absolute quota and TPL exist for Mexico, the certificate of eligibility must be presented with the entry/entry summary as well as the visaed commercial invoice. In column 34 of the CF 7501, only the visa number should appear.

When a certificate of eligibility is submitted with the entry\entry summary the appropriate Chapter 99 number or 9802.00.8055, as well as the certificate of eligibility number must appear on the CF 7501 in column 34.

Schedule 3.1.3 of Annex 300B "Conversion Factors" provides for conversion factors to obtain Square Meter Equivalents (SME) for various products for purposes of the TPL's.

6. Documentation

A. Exporter's Certificate of Origin

The exporter's certificate of origin must be completed for any textile product for which a NAFTA claim is made, and need not be filed with the entry package. It must be in the possession of the importer at the time the NAFTA claim is made, and available upon Customs' request.

B. Textile Country of Origin Declaration

The textile country of origin declaration, which is currently required on all textile importations, continues to be a requirement for entry on textile imports from either Canada or Mexico. It must be filed with the entry package. For merchandise that is claimed as NAFTA qualifying, the textile declaration must be signed by the exporter or producer.

Additional Information

Customs Electronic Bulletin Board

The Customs Electronic Bulletin Board (CEBB) is an automated system which provides the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as trade friendly within the importing and exporting community. The CEBB posts timely information including proposed regulations, news releases, Customs publications and notices, etc which may be downloaded to your own PC. The Customs Service does not charge the public to use the CEBB. You only pay telephone charges. The CEBB may be accessed by modem or through Customs Home Page on the World Wide Web. If you access it by modem, you must have a personal computer with a modem. The CEBB supports modem speeds from 2400 to 28,800 baud. Set up your terminal as ANSI, set databits to 8, set parity to N and stopbits to 1. Dial (703) 921-6155 and log on with your name and choose a password. After a few questions, you are set to get up-to-date information from Customs. If you have any questions about the CEBB, call (703) 921-6236.

The Internet

The Customs home page on the Internet s World Wide Web --which began public operation on August 1, 1996-- will also provide the entire trade community with current, relevant information regarding Customs operations and items of special interest. It was established as another effort to promote the Customs Service as trade friendly within the importing and exporting community. The home page will post timely information including proposed and final regulations, rulings, news releases, Customs publications and notices, *etc*., which may be searched, read online, printed or downloaded to your own PC. In addition, the CEBB (see above) may be accessed through our Home Page. The Customs Service does not charge the public for this service, although you will need Internet access to use it. The Internet address for Customs home page is **http://www.customs.ustreas.gov**.

Customs Regulations

The current edition of *Customs Regulations of the United States,* in loose-leaf format, is available by subscription from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The bound 1997 Edition

of Title 19, *Code of Federal Regulations*, which incorporates all changes to the *Customs Regulations* from April, 1996 through March, 1997 is also available for sale from the same address. All proposed and final regulations are published in the *Federal Register* which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information on on-line access to the *Federal Register* may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly *Customs Bulletin* described below.

Customs Bulletin

The *Customs Bulletin and Decisions (Customs Bulletin)* is a weekly publication which contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U. S. Court of International Trade and Customs related decisions of the U. S. Court of Appeals for the Federal Circuit. Bound volumes are issued annually. The Customs Bulletin is available for sale from the Superintendent of Documents.

Video Tapes

The U.S. Customs Service has prepared a two hour video tape in VHS format to assist Customs officers and members of the public in understanding the new ***Rules of Origin for Textiles and Apparel Products*** which became effective on July 1, 1996. Copies of this tape are available from many trade organizations, customs brokers, consultants and law firms. The tape may also be purchased for $20.00 (U.S. funds) directly from the Customs Service. If you require further information, or would like to purchase one or more tapes, please forward your written request to: U.S. Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue, NW, Washington, DC 20229, Attn: Operational Oversight Division. Orders must be accompanied by a check or money order drawn on a U.S. financial institution and made payable to U.S. Customs Service.

In order to assist the trade, Customs has prepared a video tape entitled Customs Compliance: Why You Should Care. This 30 minute tape is divided into two parts. Part I, almost 18 minutes in length, is designed to provide senior executives and others in importing and exporting companies with an overview of some significant features of the Customs Modernization Act and some major reasons for adopting new strategies for minimizing legal exposure under this Act. Part II is intended primarily for compliance officers, legal departments and company officers involved in importing and exporting. This latter Part,

approximately 12 minutes in length, explains why Customs and the trade can benefit from sharing responsibilities under Customs laws and it provides viewers with some legal detail relating to record keeping, potential penalties for non-compliance, and Customs Prior Disclosure program.

Part I features former Customs Commissioner George Weise, Assistant Commissioner for Regulations and Rulings Stuart Seidel, and Motorola's Vice President and Director of Corporate Compliance, Mr. Jack Bradshaw. Assistant Commissioner Seidel is the only speaker in Part II.

The tape is priced at $15.00 including postage. New orders, complete with payment in the form of a check or money order, should be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Operational Oversight Division, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

Informed Compliance Publications

The U. S. Customs Service has also prepared other Informed Compliance publications in the *What Every Member of the Trade Community Should Know About:* series, which are available from the Customs Electronic Bulletin Board and the Customs Home Page (see above). As of the date of this publication, the following booklets were available:

- Fibers & Yarns
- Buying & Selling Commissions
- NAFTA for Textiles & Textile Articles
- Raw Cotton
- Customs Valuation
- Textile & Apparel Rules of Origin
- Mushrooms
- Marble
- Peanuts
- Caviar
- Bona Fide Sales & Sales for Exportation
- Caviar
- Granite
- Internal Combustion Piston Engines
- Vehicles, Parts and Accessories
- Articles of Wax, Artificial Stone and Jewelry
- Tariff Classification
- Festive Articles

Ribbons & Trimmings
Agricultural Actual Use

Check the Customs Electronic Bulletin Board and the Customs Home Page for more recent publications.

Other Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§152.000-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from the U.S. Customs Service, Office of Regulations and Rulings, Value Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, Customs Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7054.

Additional information may be obtained from Customs ports of entry. Please consult your telephone directory for a Customs office near you. The listing will be found under U.S. Government, Treasury Department.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under Customs Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in Customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Your Comments are Important

The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement activities and rate each agency s responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs, call 1-888-REG-FAIR (1-888-734-3247).